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December 18, 2008

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Dorinda F. Fox

**RE: STAFF REPORT: TRUANCY: LESC WORK GROUP RECOMMENDATIONS**

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Continuing its efforts to keep students in school and to provide the best possible public education for each child in New Mexico, the Legislative Education Study Committee (LESC) has included a study of truancy in its work plan for the 2008 interim.

**Background**

According to *The Silent Epidemic*, a recent study funded by the Bill and Melinda Gates Foundation, poor attendance – in other words, truancy – is the first of three major warning signs that a student is likely to drop out of school. This study confirms a point that the LESC has recognized at least since 2000, when the committee began addressing the issue of truancy.

During the 2000 interim, the LESC studied the topic of *Strategies for Keeping Students in School*. In testimony to the committee, the State Department of Education, now the Public Education Department (PED), and school district personnel reported that attendance and truancy, under either the *Compulsory School Attendance Law* or the *Families in Need of Services Act* (FINS) were not enforced because the inconsistency between the two laws caused confusion and because the enforcement of the compulsory school attendance provisions was a low priority in the district court system.

In 2001, as a result of these concerns, LESC-endorsed legislation was introduced that would have amended the *Compulsory School Attendance Law* to be consistent with the FINS in the *Children's Code*; however, it did not pass. Among its provisions the legislation would have:

- changed the focus to intervention rather than enforcement;
- required schools to initiate interventions for a student who had been absent without authorization after three days during a semester similar to those in the FINS law;
- required schools to refer a child to FINS, if violations to the *Compulsory School Attendance Law* continue after intervention, or if a child had 10 unexcused absences during a semester; and
- allowed local school districts, with input from their communities, to develop additional policies that are deemed necessary to address absenteeism.

During the 2003 interim, the LESC convened a work group to study the issues of truancy, with a focus on keeping kids in school. The recommendations also focused on state statutes related to school attendance. As a result of the work group's recommendations, in 2004, LESC-endorsed legislation was enacted to amend the *Compulsory School Attendance Law* to:

- define the terms "truant," "habitual truant," and "unexcused absence";
- require local school boards to establish attendance and truancy policies that provide early identification of attendance problems and intervention measures to prevent truancy and that prohibit out-of-school suspension and expulsion from being used as a punishment for truancy; to report truancy rates to the Public Education Department (PED); and to require written notice to the parent, guardian, or custodian of a student who is habitually truant;
- designate the local juvenile probation office as the lead referral agency for habitual truancy;
- allow charges against a parent to be filed in magistrate court or district court; and
- provide for the suspension of an habitual truant's driver's license by the Children's Court for up to 90 days for the first finding of habitual truancy and for up to one year for a subsequent finding.

In 2005, the Legislature addressed inconsistencies relating to the withdrawal of a student for school absences in the *Compulsory School Attendance Law* and the *Public School Finance Act* by enacting legislation to amend the definition of "membership" in the *Public School Finance Act* to prohibit a school district from withdrawing a student who has been identified as truant.

In 2007, the Legislature made significant changes in the *Public School Code* through the enactment of a program for high school redesign, which included among its many provisions the extension of the mandatory school age to 18 in the *Compulsory School Attendance Law*.

In 2007, the committee heard an LESC staff report that included a review of state attendance laws, school policies and reporting, funding for truancy prevention, and action taken by a work group examining truancy and delinquency notices. The 2007 work group drafted a memorandum of understanding (MOU) between the Children, Youth and Families Department and PED to address the issue of school notification of delinquency proceedings against students and to outline each agency's responsibilities. In addition, legislation was drafted and endorsed by the LESC to resolve the inconsistency in the attendance and truancy statutes.

In 2008, the Legislature amended the *Compulsory School Attendance Law* to include the governing bodies of charter schools and private schools as responsible agents for the enforcement of the attendance law, in addition to school districts.

Despite the significant work of the committee and the Legislature, the issue of truancy remains a concern as evidenced by recent data from PED. The New Mexico Habitually Truant District Report for School Year 2007-2008, based on the Student Teacher Accountability Reporting System (STARS) data from districts, showed that the total number of unexcused absences reported in the school year was 1,611,254. Statewide, PED reported the data indicates that in school year 2007-2008:

- 48,216 identified or 13.2 percent of all students in districts were habitually truant; plus
- 1,450 identified or 13.41 percent of all students in charter schools were habitually truant.

To continue to address these and other issues related to truancy, in February 2008, at the request of the Chair, the LESC Director convened a work group to address unresolved issues related to truancy including the relationships among the *Public School Code*, the *Children's Code*, and school district attendance policies/intervention practices; truancy data and reporting issues; and limited resources. This staff report describes the activities of the LESC 2008 Truancy Work Group, and presents the work group's recommendations.

### **Activities of the LESC 2008 Truancy Work Group**

The charge of the 2008 work group, comprising representatives of CYFD, PED, juvenile justice, education associations, school personnel, and LESC staff, was to review statute, policy, and school practice, and provide recommendations to the committee. This report outlines the work group's recommendations focused on the goal to provide coherent and consistent statewide policies/practices that reduce truancy in New Mexico public schools.

Over the course of five meetings during the interim, the 2008 work group focused on a number of topics, including:

- intervention strategies and best practices;
- funding of truancy prevention initiatives in New Mexico;
- provisions in current law related to school attendance;
- selected responses to an LESC survey on truancy and attendance;
- findings of the work group including definitions in statute, reporting unexcused absences, and labeling; and
- recommendations to the LESC.

### ***Intervention Strategies and Best Practices***

A particular focus of the 2008 work group was the discussion of intervention strategies and best practices to address issues of attendance and truancy. Listed below are some of the approaches that the work group found most effective in New Mexico:

- **A case management approach** – as demonstrated by the New Mexico funded partners that administer state truancy/dropout prevention projects and districts that operate the *Family and Youth Resource Act* (FYRA) programs. Case management involves the coordinated assessment and provision of services to an individual and/or family by a case management staff team. In the school district, the primary focus of case management staff teams is on student need and family support to address the causes of truancy.

- **Pre-adjudication training sessions for parents and students** – as a last intervention before a student’s truancy becomes a legal matter, according to the Second Judicial Court. Children’s Court in Albuquerque provides one type of training for parents of elementary school children and another type for parents of students in the higher grades. Sessions focus on benefits of education, the link between truancy and crime, consequences of habitual truancy, barriers to attendance, and resources for families.
- **Age and grade-level interventions** – focused on parents of elementary school-age students, and on youth as well as parents in middle and high school. Experience within New Mexico and in other states shows that programs targeting elementary school-age children are most successful. Parent education and family support are provided as early intervention measures. At the middle-school level, stay-in-school coaches are effective. At the secondary level, alternative education options are most effective.
- **School-based behavioral health services** – as demonstrated by contracted mental health providers from community agencies operating in Española elementary and middle schools to provide individual behavior management and family services.
- **Community coordination teams** – as determined through defined agreements among community partners, tribal courts, and school districts. Coordination brings together resources to meet the needs of Native American students and hold partners accountable. A community coordination approach implemented by truancy/dropout prevention programs is also effective in addressing other students’ needs in the Albuquerque and Española school districts.

In addition to state-piloted intervention strategies, the work group discussed national research on effective interventions focusing on truancy from a social/behavioral health viewpoint, juvenile justice involvement, and system approaches reported in briefs from such groups as the National Center for School Engagement, the National Center for Children in Poverty, the American Youth Policy Forum, the American Bar Association, and the Principals’ Partnership. Although the work group found that there has been sufficient piloting of best practice methods to know what works in other areas and in New Mexico, the group also found that a comprehensive approach will be needed to effectively reduce truancy statewide. The group recommended applying adequate funding and staff to implement effective interventions in all school districts, as well as, the coordination of schools, juvenile services, and community agencies to ensure the best utilization of resources for student needs.

### ***Funding of Truancy Prevention Initiatives in New Mexico***

Truancy/Dropout Prevention programs are ongoing multi-year efforts that provides funding, technical assistance and training to schools and communities to prevent dropout and truancy. Funding is administered by the PED School and Family Support Bureau; currently, 14 school districts and two charter schools are receiving funding support to provide services<sup>1</sup>.

Since FY 05, the New Mexico Legislature has appropriated approximately \$3.8 million for truancy and dropout prevention. According to PED, Truancy Prevention/Dropout Prevention programs are focused on effecting system and agency change that will produce positive

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<sup>1</sup> Alamogordo Public Schools, Albuquerque Public Schools, Aztec Municipal Schools, Belen Consolidated Schools, Bernalillo Public Schools, Deming Public Schools, Española Public Schools, Gadsden Public Schools, Grants-Cibola County Schools, Lovington Municipal Schools, Roswell Independent Schools, Santa Fe Public Schools, Santa Rosa Consolidated Schools, Taos Municipal Schools, Albuquerque Charter School, and Taos Municipal State Charter School.

outcomes around these issues. Initiated by the Executive in 2004, the Governor's Truancy Prevention Program was originally administered by CYFD, and funded in FY 04 with \$1.0 million in Federal Fiscal Relief Funds. The administration of the program was transferred to PED in FY 04, and the program has been funded by the Legislature since FY 05. In FY 09, \$1.0 million was appropriated for truancy/dropout prevention, including \$230,000 for the Second Judicial Court for truancy court; however, the Governor vetoed the funds for the Second Judicial Court resulting in a final appropriation of \$770,000. According to PED, the \$770,000 FY 09 appropriation provides funds for the following current initiatives:

- \$495,000 for school-based projects at 16 school sites;
- \$30,000 for program evaluation;
- \$70,000 for program support, site visits, and technical assistance;
- \$30,000 for Native American initiatives;
- \$40,000 for training funded sites;
- \$27,500 for a project that correlates community service with detention and schools;
- \$27,500 for a truancy prevention community collaborative in Northern New Mexico; and
- \$50,000 for dropout prevention.

In related program funding, in 2003, the Legislature passed comprehensive school reform legislation that the LESC had endorsed. One component of this reform package was the FYRA, which permits the creation of a family and youth resource program in any public school in the state. The purpose of FYRA is to serve as an intermediary to assist public school students and their families to access social and health care services, thereby assisting students to stay in school and succeed. According to PED, the major reasons clients access FYRA programs are: basic needs (food and clothing), poor attendance in school, educational concerns such as grades, student behavior problems, adult education needs, and parenting issues. The FY 09 FYRA appropriation, according to PED, is \$1,500,000; it provides funding for the following:

- \$1,430,000 for programs in 20 school districts serving 90 schools;
- \$30,000 for an evaluation; and
- \$40,000 for training and support.

Additionally, according to PED, \$150,000 is allocated in FY 09 from the FYRA non-reverting fund for a longitudinal study of FYRA sites that have been funded since the beginning of the program and a case management project that will be developed and implemented in New Mexico.

### ***Provisions in Current Law Related to School Attendance***

The primary statute affecting truancy is the *Compulsory School Attendance Law* in the *Public School Code*. Among its provisions, this law:

- defines the age at which a child is required to begin attending school, the age at which a child may legally drop out of school, and the number of unexcused absences at which a student is considered legally truant;
- requires school officials to provide parental notification by certified mail or personal service of three or more successive absences from school, and provides for exemptions;

- includes misdemeanor sanctions against parents who are found to cause the student's nonattendance at school;
- requires, if violations of compulsory school attendance persist after written notice, that the student be reported to the probation services office of the judicial district where the student resides for an investigation of whether the student shall be considered a neglected child, or a child in a family in need of services pursuant to provisions in the *Children's Code*;
- defines the terms "truant," "habitual truant, and "unexcused absence";
- requires school districts to take attendance for every instructional day in every school or school program in the district; and
- requires every district to report truancy and habitual truancy rates to PED and to document efforts made to keep truants and habitual truants in an educational setting. (This requirement is in alignment with the federal *No Child Left Behind Act of 2001* (NCLB) which, under Title IV, Part A, *Safe and Drug Free Schools and Communities Act*, requires states to report truancy rates on a school-by-school basis.)

Other statutes affecting truancy are found in the *Children's Code*. The *Family Services Act* recognizing that many instances of a child's behavior are symptomatic of a family in need of services, provides for prevention, diversion, and intervention services for a child or a family. One definition of a "child or family in need of services" is "a family whose child's behavior endangers the child's health, safety, education, or well-being."

The *Families in Need of Court-Ordered Services Act* provides service for a family in need of services through court intervention when voluntary services have been exhausted. Included in the definition of a "family in need of court-ordered services" is a "family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse for more than ten days during a school semester."

### ***Selected Responses to an LESC Survey on Truancy and Attendance***

To supplement points made by the work group, LESC staff developed a survey on truancy and attendance that was sent to 89 school superintendents and 16 truancy/dropout prevention programs. Of 86 who started the survey, there were 42 respondents who completed the questionnaire. Eight respondents were truancy program coordinators. In total, 38 school districts responded, that is 42.6 percent of the 89 districts.

Included in the survey were questions regarding district attendance policies, district practices in relation to current attendance law, successful intervention strategies, and recommendations for change in state statute.

- A significant finding of the survey is that district approaches to truancy and practices to prevent it are varied. In terms of counting unexcused absences, for example, in secondary schools, the counting of a full-day absence ranges from a full-day to one-half day or missing from one to three class periods. The counting of absences also varies across districts at the elementary level.
- Just as various are the means by which districts contact parents about their children's unexcused absences. A combination of phone calls, letters, and parent meetings was the method most frequently reported for establishing early intervention of students with unexcused absences. Telephone contact is initiated anywhere from after one unexcused

absence to after seven. Most respondents indicated that the first written notification of parents is delivered after three absences while others indicated that first written contact is made after five to 10 unexcused absences. In some cases, in fact, the methods of parental notification seem not to comply with state law, which requires that written notification of habitual truancy be sent by certified mail to or by personal service on the parent of the student.

- To keep students in an educational setting, most of the districts responding rely on guidance counseling (44 of the 48 who responded to the question), while two-thirds employ tutoring and nearly as many make home visits. A majority use in-school suspension as an alternative to out-of-school suspension or expulsion.
- Survey responses revealed even more variety in enforcement techniques. Referrals to the juvenile probation office (JPO) were indicated after 10 unexcused absences by over one-half of respondents while other responses indicated that JPO contact is made after three to seven unexcused absences, after home visits, and after all other means are exhausted. There was also a concern expressed that JPOs may not be responsive to cases of habitual truancy.
- Equally varied are the intervention strategies that districts find most successful, including such measures as early intervention home visits, case management, parent involvement, tutoring, mentoring, attendance contracts for elementary students, freshmen academy at high schools, community truancy task force wellness program teamwork with city agencies, family services, utilization of JPO, in-school detention/suspension for grades 6-12, Saturday school, requiring a 90 percent attendance rate for students to receive course credit, peer intervention, and incentives for improved attendance.
- One point of broad agreement among the respondents is the need for adequate numbers of trained staff to address the requirements of the *Compulsory School Attendance Law*. Twenty-seven of 50 respondents to the question, more than half, indicated their district does not employ a truancy coordinator; and, in those districts, the staff that fulfills the major responsibility for early identification and intervention was most often a secretary, followed by a principal, a teacher, an assistant principal, a counselor, and the superintendent.
- Finally, survey respondents were asked what changes they would recommend in the state's approach to truancy. Again, the survey reveals a wide range of opinion, from a means to cite secondary students, e.g., truancy court, to stronger and faster court dispositions for parents found to be in violation of the attendance law. Some of the respondents' recommendations correspond to those of the work group, especially with regard to defining one-half day and full-day absences in statute to standardize reporting and more funding for intervention and enforcement. The work group considered these recommendations within the context of the other information studied and produced the following findings and recommendations for the committee's consideration.

## **Findings of the 2008 Work Group**

### ***Definitions in Statute***

The work group found an issue within the *Compulsory School Attendance Law* as it relates to the definitions of "truant" and "habitual truant." The group found difficulties in tracking and taking timely action at the school level based on the current definitions which are based on separate time periods. Creating consistency of definitions within the attendance statute would focus

schools, students, parents, and courts on attendance during a school year and simplify tracking/reporting at all levels.

Regarding the relationships among sections of the *Public School Code* and the *Children's Code*, the 2008 work group found, as others have in the past, that the *Compulsory School Attendance Law* and the *Families in Need of Court-Ordered Services* in the *Children's Code* employ different definitions of truancy. Aligning the time periods in these definitions would allow for better coordination between schools and juvenile probation offices.

### ***Reporting Unexcused Absences***

Beyond these findings, the work group found inconsistencies in attendance reporting by districts, particularly in counting unexcused absences. Currently, there is no state guidance on how unexcused absences are reported, and districts vary in what they report to PED as half-day and full-day unexcused absences. These variable definitions result in unreliable data that affects the early identification of students needing intervention as well as the accuracy of state reports from which rates of truancy are gathered. The work group agreed that counting of unexcused absences should be defined at the state level.

### ***Labeling***

As a result of their review and discussion of statute and its application, work group members were concerned about the potentially negative effects of the term “truant” as currently used in state law. For one thing, work group members feared that applying the label “truant” to a student who has accumulated five unexcused absences within a 20-day period may create a stigma that actually discourages, rather than encourages, better attendance. Work group members also questioned whether applying the term to the student is even appropriate, given that it is the parents, not the student, who are ultimately responsible for satisfying the compulsory school attendance requirements in law. For another thing, parents and school personnel alike are often confused about the difference between “truant” and “habitual truant.” Based on these points, work group members agreed that removing the term “truant” from the statutes in relation to five unexcused absences would facilitate working with both parents and students to increase students’ school attendance by directing attention away from labeling and toward effective intervention strategies.

### **Recommendations of the 2008 Truancy Work Group to the LESC**

1. To address definitions, reporting, enforcement, and other statutory issues, amend the *Compulsory School Attendance Law* to:
  - remove the term “truant”, replacing it within the definitions and elsewhere in statute with “a student in need of early intervention;”
  - allow the use of withdrawal only after exhausting intervention efforts;
  - require PED to review and approve school district and charter school attendance policies;
  - require statewide consistent counting and reports of unexcused absences by schools, providing that:
    - the unexcused absence of two or more classes up to 50 percent of an instructional day shall be counted as a one half-day absence, and



- the unexcused absence of more than 50 percent of an instructional day shall be counted as one full-day absence, and
  - local districts may create policies that allow for referral to juvenile authorities students who consistently miss less than one-half day, e.g., one class period;
  - for each student identified as habitually truant, require schools to document their efforts to notify parents of student absences, efforts to meet with parents to discuss possible interventions, and the intervention strategies applied;
  - allow written parental notification to be delivered via regular US Mail; and
  - in the enforcement penalty section:
    - require that written parental notices of unexcused absences include a date, time, and place for the parent to meet with the school or charter school to develop intervention strategies that focus on keeping the student in an educational setting; and
    - allow juvenile probation offices to send written notices to a parent of the student directing the parent and student to report to the JPO to discuss services for the student or the family.
2. Align the *Children's Code* with the *Compulsory School Attendance Law* by amending the *Families in Need of Court-Ordered Services Act* to provide that a family in need of such services is one with a student who has accumulated the equivalent of 10 or more unexcused absences within a school year.
3. To create a comprehensive approach to truancy/dropout prevention predicated on best practices found in New Mexico pilot projects, introduce legislation establishing a statewide program of truancy/dropout prevention that will provide:
- truancy liaison staff in each district;
  - local planning support for community partnerships in which communities fund a portion of the planning effort;
  - technical assistance to schools on essential leadership skills including cultural competency, collaboration and communication, effective practices and partnerships for truancy prevention, using and sharing data, and understanding relevant policy and funding sources; and
  - evaluation.
4. Finally, to provide additional support to address student and family needs that affect school attendance and success:
- increase appropriations to FYRA to provide funding of case management liaisons in more schools within the state; and
  - direct the revision of the PED rule to allow schools to be eligible to receive FYRA grants for a period of more than three years.

# LESC TRUANCY WORK GROUP, 2008 INTERIM

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